IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7549 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNA TAL. ANUSUCHIT JATI KHETI SAMUDAYAK SAHAKARI MANDALI LTD

Versus

DY/ASSTT.COLLECTOR

Appearance:

MS PREETI S PARMAR for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 22/12/2000

ORAL JUDGEMENT

On the allegation that member of the Society to whom plots of land in all admeasuring 171 Acres 33 Gunthas were allotted have failed to cultivate the land, action was initiated. It is required to be noted that on behalf of the Society, letters were written to measure

and demarcate the land but it seems that no action was taken. That apart, on the allegations as indicated in the order at Annexure 'L' dated 26.10.1989, District Registrar thought it fit to appoint an Administrator under section 81 of the Gujarat Co-Operative Societies Act, 1961. The Administrator was thus put in possession of land. It seems that taking into consideration the order made by the District Registrar, Collector straightaway passed an order of resuming the land by an order dated 15.12.1989 vide Annexure 'M'. It is required to be noted that the Administrator appointed by the District Registrar filed an appeal wherein he has pointed in paragraph 7 of the appeal memo that the order is made on 15.12.1989 and till the date of filing an appeal, i.e. 3rd October 1991, possession was not given and even on the date of filing the appeal land was being cultivated. An allegation has been made that neither the Government has taken the possession nor the possession is allowed to remain with the applicant but the persons who were original owners of the land were cultivating the land. It has been specifically pointed that the owners have received the amount of land in question. Despite this fact, they are also enjoying the land. It is required to be noted that the Society consists of persons of scheduled caste/tribe. It seems that despite the Administrator pointing out this fact, the Collector disposed of the appeal, mainly relying on the order made by the District Registrar. Under section 81, District Registrar was appointed for a different purpose altogether as mentioned in section 81. An appeal was preferred before the State Government and the Additional Secretary (Revenue), while rejecting the Revision Application directed that if the Co-Operative Society makes a demand for cultivating the land, the Collector may decide after forming an opinion from record that members are likely to cultivate the land. He should bear in mind the strength of the members also.

Once the District Registrar appointed a person to administer the property of the Society, and the person appointed pointed out the factual aspect, it was necessary to consider the case in proper perspective. It was necessary to consider that there was evidence in that behalf. It is required to be noted that the members of scheduled caste were given the land for cultivation. It has been pointed out that the land was not measured which was required to be done. From the record, it is clear that even after issuance of notice, the members were conveyed information that the measuring party will come for measurement of the land. It is also made clear that in view of the rainy season, the measuring party could

not visit.

It seems that the Revisional Authority has proceeded on the assumption that the District Registrar made an order for liquidation. The Revisional Authority has also taken into consideration the matter in that spirit. It is specifically mentioned that the record of the Society was taken on 8.8.1991 but it is a matter of surprise that despite the order of liquidation, nothing has been done. It is also observed that if there was no land, then how the Administrator was managing the affairs. That was required to be taken into consideration. The revisional authority came to the conclusion that the Society came into existence on 8.7.1986 and when the order was made to allot the land to the Society, the Society was not in existence. If that be so, then according to the revisional authority, the order allotting the land itself is improper. The Revisional Authority observed that the Assistant Collector came to the conclusion that the Society is not utilizing the land. In the said order, the Revisional Authority also come to the conclusion that if the Society is capable of making a demand for land, the Collector should reconsider. In view of this order, it would be just and proper to consider the matter afresh.

The matter is, therefore, remanded to the Collector who shall render a decision in accordance with law in the matter within a period of three months from the receipt of the writ, after hearing the petitioner.

This petition stands allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.

(B.C. PATEL, J.)

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